



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/585,454

08/04/2006

Michael Woehrle

27409U

2988

20529 7590 06/10/2009
THE NATH LAW GROUP
112 South West Street
Alexandria, VA 22314

EXAMINER

MCDUFFIE, MICHAEL D

ART UNIT

PAPER NUMBER

3632

MAIL DATE

DELIVERY MODE

06/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,454	Applicant(s) WOEHRLE ET AL.	
	Examiner MICHAEL MCDUFFIE	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3632

This correspondence is in response to applicant's reply filed on 06/05/2009. Claims 1-8 and 10-11 are pending.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/05/2009 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taubmann et al. (EP 1068093 B1).

Regarding claim 1, Taubmann discloses a drive having a spindle **5** which is attached to a first rail **4** of two rails **3, 4** that are adjustable relative to one another by means of at least one support (as shown in Fig. 1 below) that is located on the end of the spindle **5**, and with a gear mechanism **9** which is driven by a motor **2** and which is arranged on the second rail **3**. Taubmann fails to teach where the at least one support device has a trough-shaped outer support surface in which one end of the spindle is seated in a fixed manner. The Examiner notes that the spindle's attachment to the support device is merely an alternative method of fastening the elements together. Taubmann further teaches a block-like limb **6b** attached to the support device.

The Examiner further notes that the trough-shaped, outer bearing surface of the present invention, is merely a gusset, for providing additional support. It is well known in the art to provide gussets, to add stability to elements as seen in: US 5267717 to Isomura, element **124**; US 5516071 to Miyauchi, element **13**, and US 5259257 to Mouri, element **13**. The claim would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

With regards to claim 2, Taubmann teaches the drive, characterized in that two such supports (see Fig. 1 below) are provided, of which in each case one support device serves to support one of two ends of the spindle **5**.

Regarding claims 3, 4, and 10, the spindle being attached onto the trough-shaped bearing surface by means of laser welding, is a product by process. The Examiner notes that the utilization of welding is a mechanical equivalent of using a screw or other fastener to attach two elements. It would have been obvious to one having ordinary skill in the art at the time of the invention, to weld the spindle to the support surface, as a substitute for using screws, bolts, or other fasteners, in order to provide a secure connection between the spindle and support surface.

With regards to claims 5, 7, 8, Taubmann fails to disclose the specific dimensions of the components of his device. It would have been obvious to one having ordinary skill in the art at the time of the invention to alter the measurements of the components, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

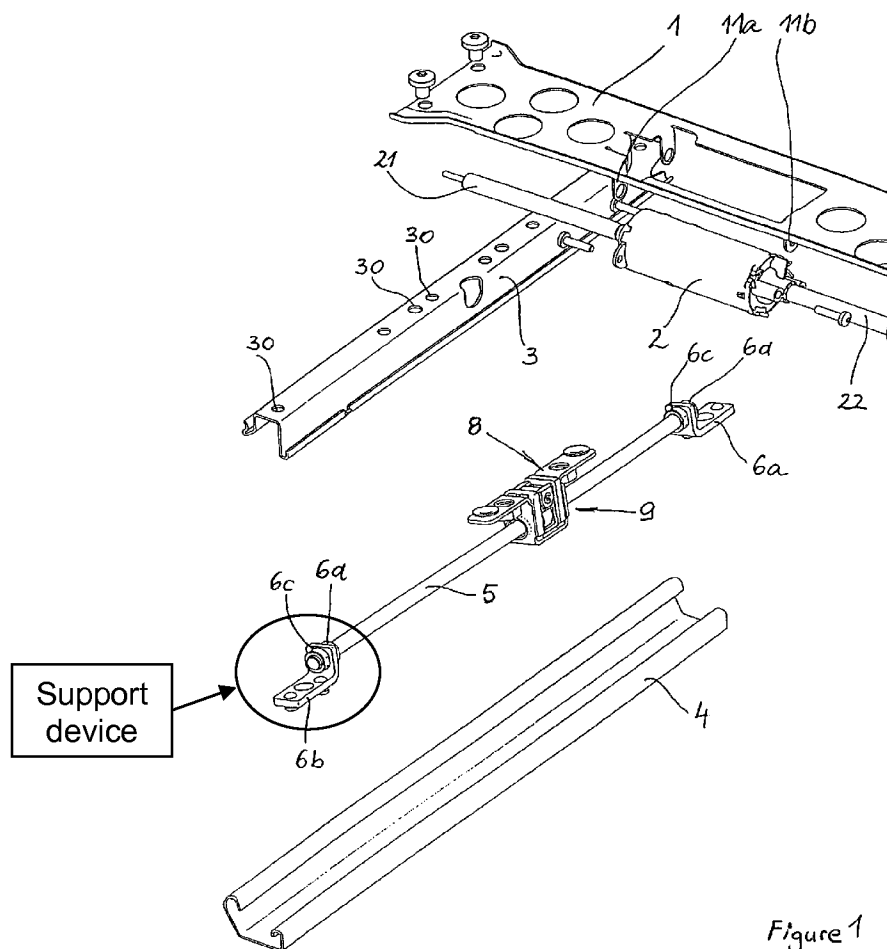
Regarding claim 6, Taubmann fails to teach the desired materials as claimed by the Applicant. It would have been obvious to one having ordinary skill in the art at the time of the invention, to utilize steel or other metals, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 11, Taubmann goes on to disclose the drive, characterized in that the horizontal limb **6b** having attachment hole (as shown in Fig. 14) so that it can be attached to the vehicle floor.

Taubmann discloses the claimed invention except for where the support is made of cold-extruded metal. It would have been obvious to one having ordinary skill in the

Art Unit: 3632

art at the time the invention was made to utilize a cold-extruded steel support with Taubmann's device, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.



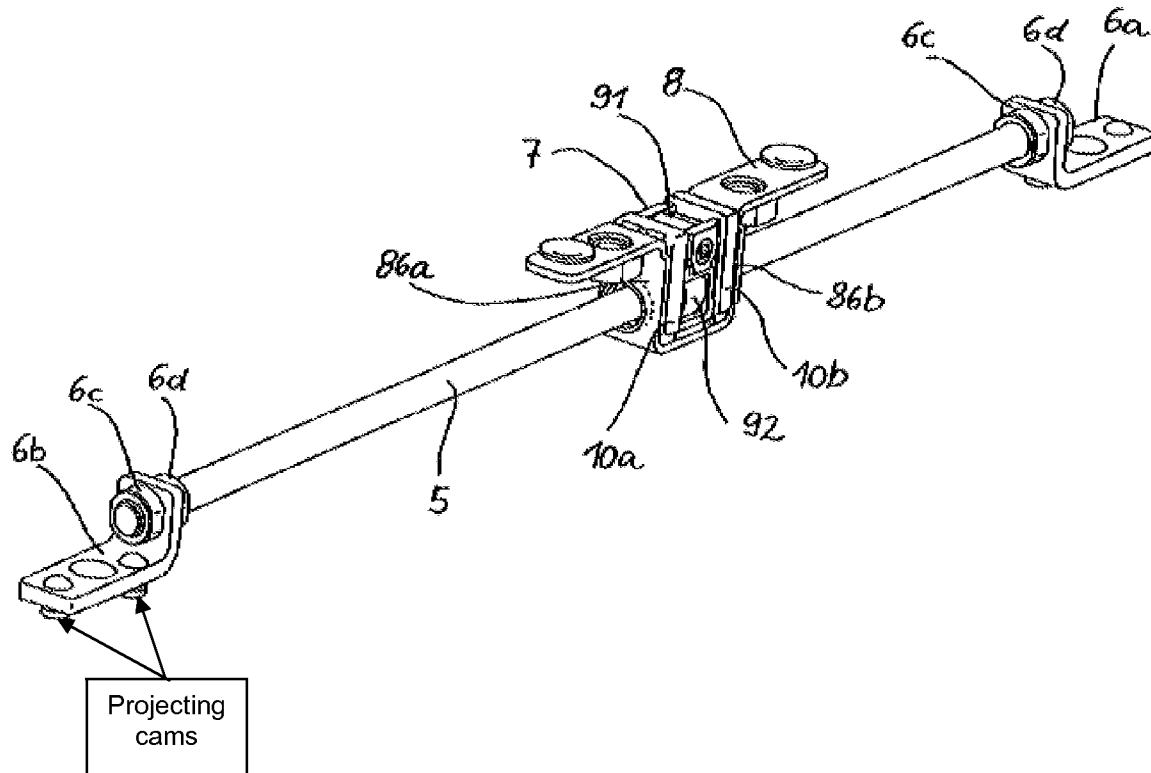


Figure 2

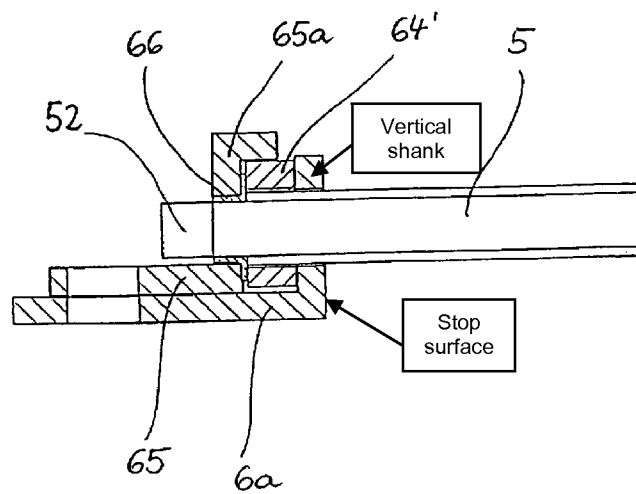


Figure 15

Response to Arguments

Applicant's arguments with respect to claims 1-8 and 10-11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL MCDUFFIE whose telephone number is (571)272-3832. The examiner can normally be reached on Mon.-Fri., 7AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Shriver can be reached on 571-272-6698. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael McDuffie/
Examiner, Art Unit 3632
7-Jun-09

Application/Control Number: 10/585,454

Page 8

Art Unit: 3632

/J. ALLEN SHRIVER II/

Supervisory Patent Examiner, Art Unit 3632